



File No. O Per Detention
50

Legal Deptt.

A BRANCH

Subject:—

Opinions under the
Preventive Detention Act, 1950
(IV of 1950)

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C O N T E N T S

Legal Department File No. O. Prev. Detention/50.

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2.	<u>422-Conf.</u> 12-6-50	Re: B'bay cond tions of Detention orders, 1950. Whether fresh orders under this order are are necessary in cases where orders have been already been passed under the Act.	5 - 6
3.	<u>7864</u> 9-6-50	Whether the present ^a practise of issuing two separate orders should continue or the detention order issued by the Local Officers should indicate the place of detention as is indicated in the specimen form applied by the G. of India and whether it is necessary to issue fresh order specifying all the places of detention.	7 - 10
4.	<u>12756</u> 7-9-50	Question regarding place of detention of a person ordered to ~~be~~ ~~be~~ detained under Sec. 4 of the Act.	11 - 12.

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Office of the R.L.A.

Section 3(2) of the Preventive Detention Act, 1950 provides that any District Magistrate or Sub-Divisional Magistrate, or, in a presidency-town, the Commissioner of Police may, if satisfied as provided in sub-clauses (ii) and (iii) of clause (a) of sub-section (1), exercise the power conferred by the said sub-section. The question raised for the consideration of the R.L.A. is whether an additional District Magistrate can exercise the power conferred upon the District Magistrate by this Sub-section.

2. The notification appointing a person as an Additional District Magistrate invests him with all the powers of a District Magistrate under the Code of Criminal Procedure and under any other law for the time being in force. That is in accordance with section 10(2) of the Code of Criminal Procedure which provides that the Provincial Government may appoint any Magistrate of the First Class to be an Additional District Magistrate, and such Additional District Magistrate shall have all or any of the powers of a District Magistrate under this Code or under any other law for the time being in force as the Provincial Government may direct. Assuming that the notification in the general form without specifying the powers under the Code or under particular enactments is in order, it is doubtful how far such notification would confer the power under sub-section (2) of section 3 of the Preventive Detention Act, 1950. In interpreting the expression "any other law" occurring in section 10(2) of the Code, a distinction has no doubt been drawn between powers

are given by the law itself & the powers 1 to 3
powers which may be said to have been given by
an executive order under any law. Compare
Samarapuri Chetti v. Corporation of Madras,
I.L.R. (1937) Madras p. 1034; Prabhakar v. The
Grown, I.L.R. (1943) Nagpur 155; and Prabhulal
v. Emperor, A.I.R. (1944) Nagpur 84. In the
two Nagpur cases a very strict view was taken
about the exercise of the powers of detention
by a District Magistrate. Although, therefore,
it is possible to contend that by combined opera-
tion of section 10(2) of the Code of Criminal
Procedure and section 3(2) of the Preventive
Detention Act, an Additional District Magistrate
could exercise the powers of detention, I would
advise that the safest course should be for the
District Magistrate to exercise the powers himself.
Courts will be astute to discover reasons in
favour of the liberty of the subject, and we
should avoid the possibility of a strict view
being taken and the orders declared invalid on
that ground. Besides the work of making detention
orders could not be so onerous or voluminous as
to necessitate the assistance of an Additional
District Magistrate.

O.C. Sd/- (P.M.L.)

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Remembrancer of Legal Affairs.

U.R. to H.D. No. 3741, dated the 17th March 1950.

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Legal Department.

The view taken by H.D. is not correct.

Section 4 of the Preventive Detention Act, 1950, empowers the State Government to specify the conditions as to maintenance, discipline and punishment for breaches of discipline. By H.D. Order No. S.D.III/671-XXII-B, dated 26th February 1950 issued under section 4 of the said Act the provisions of the Bombay Conditions of Detention Order, 1948, were applied to persons detained under the said Act. Under the said conditions the power to classify a detainee into class I and class II has been given to the detaining authority. Now the Government has made, in virtue of the said section 4, an order called the Bombay Conditions of Detention Order, 1950, prescribing fresh Conditions of Detention and as to how the classification should be made. The new conditions would apply to all persons detained either before or after 1st June 1950 as the State Government has powers to specify conditions from time to time under section 4 of the Preventive Detention Act, 1950, read with section 14 of the General Clauses Act, 1897. The Classification already made in the case of prisoners before 1st June 1950 would continue and no fresh orders are necessary.

o.C.

Sd/-

Additional Secretary to Government.

U. R. to H.D. (Spl.) No. 422-conf, dated the 12th

xxth June 1950.

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Office of the R.L.A.

Sub-section (2) of section 3 of the Preventive Detention Act, 1950, authorises the District Magistrate etc., to exercise the power conferred by sub-section (1), i.e. the power of making an order directing a person to be detained. Section 4 provides that "So long as the detention order is in force in respect of any person he shall be liable to be removed to and detained in such place and under such conditions including conditions as to maintenance, discipline and punishment for breaches of discipline as the Central Government or as the case may be the State Government may from time to time by general or special order specify." The opening words of section 4 when contrasted with the concluding words make it clear that two different orders are contemplated. That also follows from the fact that the place and the conditions can be specified either by a general or by a special order, which means that such general or special order cannot be the same as the detention order itself. The statement in the Government of India's letter No. 25/15/50-Poll dated the 26th May 1950, that in the first place section 4 of the Act authorises the Central or the State Government to specify the place of detention under a detention order is not correct. The scheme of the Act is that the place and the conditions are to be specified in a general or special order which must necessarily be different from the detention order in each individual case; for, the detention order can be made by the District Magistrate whereas the order under section 4 can be made by the State Government or the Central Government. Apparently, Government Notification No. S.D. III-671XXII.A. dated the 26th February 1950 was issued in pursuance of the powers given to the

given to the State Government under section 4 although the notification does not make specific mention of the section. It must be said that the notification is not in terms of the section; for, the section does not empower the State Government to authorize the District Magistrate etc., to detain a person in a particular place. The Mysore model is in strict conformity with the terms of section 4. Once the place is specified by a general order the District Magistrate may, as a matter of executive instruction, state that person shall be detained in one of the places specified in the order made by the State Government. There is nothing objectionable in two separate orders being issued by the District Magistrate as at present especially as the order specifying the place is not a statutory order. However, the order under notification No. S.D.III-671. XXII.A dated the 26th February 1950 may be now modified so as to bring it in terms of section 4.

o/c Sd/- (P.M.L.)
9/6

Remembrancer of Legal Affairs.

U. R. to H.D.(Spl). No. 7864 dated the 9th June 1950.

C.G.R. 26-6

Office of the R.L.A.

Attention is invited to R.L.A.'s opinion No. 7864, dated the 9th June 1950. Once an order under section 4 of the Preventive Detention Act, 1950 is issued, there is no legal objection to the District Magistrate or the Commissioner of Police directing initially that the person ordered to be detained should be detained in one of the specified places, even though such place be beyond their territorial jurisdiction. Section 4 in terms makes provision for that purpose. Provision for subsequent transfer by any specified authority such as the Inspector General of Prisons can be made in the order issued by Government under section 4.

o/c Sd/- (P.M.L.)

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Remembrancer of Legal Affairs.

U.R. to H.D. No. 12756, dated the 7th September 1950.

C.G.R. 26-6